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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-201753.2 DATE: May 26, 1981

MATTER OF: John J. Moss--Reconsideration

DIGEST:

Prior decision denying protest concerning agency's denial of information allegedly needed to submit informed proposal is affirmed because: (1) denial was based on protester's failure to show information was necessary rather than being based on agency's receipt of proposals apparently submitted without information; in any event, protester's suggestion that proposals received may have been based on "inside information" is speculative; (2) protester's qualified request for "trial-type hearing" on matter could not have been granted; and (3) other protest issues were properly found to be untimely filed.

John J. Moss requests reconsideration of our decision in John J. Moss, B-201753, March 31, 1981, 81-1 CPD 242, in which we denied his protest in part on the merits and dismissed his protest in part as untimely filed. The facts were fully discussed in our prior decision on this protest and, therefore, will only be restated here insofar as is necessary to resolve issues raised in Mr. Moss' request for reconsideration. Based on our review of the record, we affirm our decision.

Mr. Moss had protested under two requests for proposals (RFP), issued by the Department of Energy (DOE), calling for proposals to perform certain support services related to preparation and prosecution of patent applications. One of the

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issues resolved in our decision concerned Mr. Moss' allegation that a DOE contract specialist had refused to supply him with certain requested information concerning prior DOE contracts before the proposal due date. We denied this portion of the protest because the protester had not shown that the information was necessary in order to make an informed offer or that the requested information could have been supplied by the closing date. We also noted that DOE had received a large number of proposals which had been submitted apparently without the benefit of this information. Consequently, we held that Mr. Moss had not met his burden of proof and denied this portion of the protest.

Mr. Moss now suggests that it is irrelevant that many proposals were received by the agency to the extent "any responses used inside or prior-contractor information denied to the protester." As noted above, our denial of this issue was based on the protester's failure to carry its burden of proof to show that the information was necessary in order to submit an informed proposal rather than being based on the number of proposals which had been received. In any event, we must consider Mr. Moss' allegation concerning proposals based on "inside information" to be speculative in nature.

Mr. Moss also contends that he should have been given an opportunity by our Office to submit evidence on this issue at a "trial-type hearing" before any decision was reached on the merits. Mr. Moss states that it was his understanding that we would schedule a hearing to gather evidence before deciding this or any other issues of the protest. Mr. Moss requests that he now be allowed to submit evidence to support his protest and that he be allowed to "cross-examine any evidence offered by the DOE."

Upon receipt of Mr. Moss' initial protest, we sent him a copy of our Bid Protest Procedures (4 C.F.R. part 20 (1980)) which provide, at section 20.7(a), an opportunity for a conference at the request of the protester or any other interested party. The conference mentioned in the section is informal and does not involve formal procedures such as transcripts, sworn testimony and cross-examination all of which are contemplated in Mr. Moss' request for a "trial-type hearing." Moreover, although Mr. Moss stated in his initial protest that a "hearing" should be scheduled if the Comptroller General intended to deny his protest, we did not consider this statement to be a request for a conference under section 20.7(a) above. Apart from Mr. Moss' use of "hearing" rather than "conference," the section clearly contemplates that a conference is to be requested and held before the Comptroller General has arrived at a decision on the protest in question. To the extent, therefore, that Mr. Moss made a qualified request for a conference to be held after the Comptroller General had decided the merits of his protest, the request was procedurally inappropriate and could not have been granted. Moreover, the agency protest report was sent to Mr. Moss by DOE and he was given an opportunity to comment on the report before we issued our decision.

In our decision we also held that issues regarding the evaluation criteria and closing date for receipt of proposals were untimely under our Procedures since they were filed with Mr. Moss' comments on the agency report or well after the closing date for submission of proposals. Mr. Moss now contends that, while these issues were not explicitly raised prior to our receipt of his comments, they were implicit in his initial protest submission and should have been considered timely since that communication was filed in our Office on the closing date. We do not agree.

The only evidence Mr. Moss advances in support of this argument is that DOE--in its reply to his initial protest--recited the evaluation criteria for the proposals and advanced the view that the "subject RFP solicitation documents" were not rendered deficient merely because the agency had been unable to furnish Mr. Moss with requested information as to "past and existing awards, contracts, awardees, prices, and offers." Because of this DOE statement, Mr. Moss argues that DOE recognized the "effect" of his initial protest as actually raising these issues.

In our view, the DOE statement can be read only as a reply to the specifics of Mr. Moss' initial protest and cannot in any way be viewed as suggesting that Mr. Moss was either explicitly or implicitly challenging the evaluation criteria or closing date.

In any event, if Mr. Moss desired us to consider these issues, he should have directly stated them as his bases for protest in his initial submission. In this regard, section 20.1(d) of our Procedures provides:

"No formal briefs or other technical forms of pleading or motion are required, but a protest and other submissions should be concise, logically arranged, and direct."

Mr. Moss should not have expected us to interpret his initial protest as meaning anything other than that which was stated directly, namely: a complaint that DOE had improperly refused him the requested information. Moreover, Mr. Moss stated in his comments on the DOE report that he had not initially protested against the "Evaluation Factors as such." Therefore, since these alleged solicitation defects were known to Mr. Moss prior to the closing date, they should have been directly protested to our Office prior to the closing date in order to be

considered. Since they were not, the protest was clearly untimely. On this score, our Procedures do not allow the consideration of an otherwise untimely protest merely because it may have been filed by a small business which, allegedly, is Mr. Moss' status.

Accordingly, our decision denying Mr. Moss' protest in part and dismissing it in part is affirmed.

A handwritten signature in cursive script that reads "Milton J. Aorlar".

Acting Comptroller General
of the United States